



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

17

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

09/890,035

07/26/2001

Giovanni Bocola

1011-326

5919

47888 7590 04/17/2007
HEDMAN & COSTIGAN P.C.
1185 AVENUE OF THE AMERICAS
NEW YORK, NY 10036

EXAMINER

HYLTON, ROBIN ANNETTE

ART UNIT

PAPER NUMBER

3781

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
----------------------------------------	-----------	---------------

3 MONTHS

04/17/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/890,035

Applicant(s)

BOCOLA, GIOVANNI

Examiner

Robin A. Hylton

Art Unit

3781

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 25-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 25 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Valyi (US 3,163,544) in view of Schellenbach (US 5,444,674), as evidenced by Mason, Jr. (US 3,235,117).

Valyi discloses an injection-molded container having an integrally formed container body, a hinge located at the rim of the container body, and a covering element. Valyi further discloses the covering element has an integrally formed annular gasket. See column 2, lines 17-24 regarding the method of manufacture.

Schellenbach teaches it is known to provide a covering element of a first material with an annular gasket of a second material, the second material being softer than the first material (see column 4, lines 63-66 and column 5, line 14).

Mason teaches it is known to provide a closure with an integrally formed sealing element (25 and 60) or a separately formed sealing element (65).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the covering element and annular gasket of Valyi as two separate elements of one hard (plastic) material and one soft (plastic) material, respectively, as taught by Schellenbach, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art and to select different materials as necessary for the desired manufacture of and for the desired finished product, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. Doing so provides a more durable

Art Unit: 3781

container of a hard plastic and a resilient and reliable seal between the container body and the softer annular gasket.

3. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 26 above, and further in view of Mueller (5,927,566)

Valyi as modified discloses the claimed container except for the container being formed with an open bottom.

Mueller teaches it is known to provide a container formed with an integral lid and an open bottom (column 13, lines 53-62).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of forming the container of Valyi with an open bottom as taught by Mueller. Doing so allows the container to be further shaped into a finished container as desired for its use and aesthetic appeal.

4. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over the prior art as applied to claim 26 above, and further in view of Keller (WO 95/28274).

Valyi as modified discloses the claimed container except for the container being formed with an open bottom.

Keller teaches it is known to provide a container formed with an integral lid and an open bottom (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to further apply the teaching of forming the container of Valyi with an open bottom as taught by Mueller. Doing so allows the container to be used with an auxiliary container.

Response to Arguments

5. Applicant's arguments filed January 29, 2007 have been fully considered but they are not persuasive.

Applicant In response to applicant's argument that the bag of Valyi cannot be used to hold cosmetic, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Wherein a cosmetic is not defined in the claims, it is asserted that a cosmetic can be a liquid. The disclosure of Valyi clearly states the container (i.e., bag) is suitable for use with a liquid.

Regarding applicant's assertion that the gasket seal of Valyi cannot be formed separately from the lid and that no teach reference is cited in support thereof, the patent to Mason is cited as evidence that such modification is known to one of ordinary skill in the art.

Conclusion

6. In view of the new ground of rejection with respect to the open bottom of the container as set forth in new claim 27, this Office action is made non-final.

7. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to

Art Unit: 3781

and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

9. In order to reduce pendency and avoid potential delays, Group 3720/80 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

10. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick, can be reached on (571) 272-4561.


Art Unit: 3781

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
April 16, 2007



Robin A. Hylton
Primary Examiner
GAU 3781